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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/942,537	08/29/2001	Dayna Buskirk	RTI-143	7267

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EXAMINER

STEWART, ALVIN J

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 05/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/942,537

Applicant(s)

BUSKIRK ET AL.

Examiner

Alvin J Stewart

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 6-35 and 64-66 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6,7,9-13,16-23,27-29,31-33 and 64-66 is/are rejected.
- 7) ☒ Claim(s) 8,14,15,24-26,30,34 and 35 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 9/15/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

***Response to Amendment***

Claims 1-5 and 36-63 are canceled.

***Election/Restrictions***

Applicant's election without traverse of Group I, Species I is acknowledged.

Claims 67-74 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected group and/or species. Election was made **without** traverse.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 6, 7, 10-13, 16, 17, 19-23, 27 and 64-66 are rejected under 35 U.S.C. 102(b) as being anticipated by Beck, Jr. et al US Patent 5,961,520.

Beck, Jr. et al discloses an implant comprising at least one assembled bone block (316 or 416) and a natural ligament (14). The bone blocks are divided in two segments (43 & 44; or 413) that are interlock with one another (see figs. 7-10; col. 6, lines 18-48; col. 11, lines 49-55; and col. 13, lines 33-47).

Regarding the cortical bone material, it is an inherent characteristic of using a cortical bone as an anchoring device because the cortical bone is stronger than the cancellous bone.

Regarding claim 2, see slot 48. The planar segments are elements 45 & 46.

Regarding claims 16, 19 and 20 see fig. 10.

Regarding claim 16, see element 325.

Art Unit: 3738

Regarding claim 23, see Fig. 10 element 52.

Claims 28, 29 and 31-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Parr et al US Patent 4,744,793.

Parr et al discloses an implant comprising a first matable segment (240) having a first inner mating surface (see attachment), a protrusion extending from the surface (242), a second matable segment (34) having a second inner mating surface, the surface having at least one hole (see attachment) to receive the protrusion and a length of flexible material between the first and the second segments.

Regarding claim 31, see element 47.

Regarding claim 32, see col. 3, lines 1-3.

Regarding claim 33, see element 48.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beck, Jr. et al US Patent 5,961,520 in view of Schwartz et al US Patent 5,769,899.

Beck, Jr et al discloses the invention substantially as claimed. However, Beck, Jr. et al does not disclose a cortical bone that is demineralized.

Schwartz et al teaches an implant having a bone that is demineralized for the purpose of serving as a replacement for articular cartilage.

Art Unit: 3738

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the first segment of the Beck, Jr. et al reference with the demineralized bone of the Schwartz et al reference in order to serve as a replacement for articular cartilage.

Regarding claim 18, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have a diameter between 9 to 12 mm, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

#### ***Allowable Subject Matter***

Claims 8, 14, 15, 24-26, 30, 34 and 35 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alvin J Stewart whose telephone number is 703-305-0277. The examiner can normally be reached on Monday-Friday 7:00AM-5:30PM(1 Friday B-week off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 703-308-2111. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3738

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*A. Stewart*

Alvin Stewart  
May 17, 2004.